

Internal Revenue Service
memorandum

CC:TL:Br3

GEBowden

date: SEP 9 1988

to: District Counsel, Laguna Niguel W:LN
Attn: Marsha Yowell

from: Chief, Branch 3, Tax Litigation Division CC:TL:Br3

subject: Limitations on Applicability of § 6621(c) and § 6659 to
Carryback Amounts

You requested technical advice on the above issue by
telephone, August 31, 1988.

ISSUE

Whether the \$1,000 floor for applicability of § 6621(c) and
§ 6659 must be met for each year of a carryback deficiency.

CONCLUSION

The \$1,000 floor must be met for each year in which §
6621(c) and § 6659 are to be applied.

FACTS

Petitioner has a deficiency for [REDACTED] of approximately
\$[REDACTED] resulting from an valuation overstatement on his return.
Both the increased interest provision of § 6621(c) and the
valuation overstatement addition of § 6659 apply to the [REDACTED]
deficiency. As a consequence of the [REDACTED] valuation overstatement
there is an investment credit carryback to [REDACTED]. This results in
a deficiency of less than \$1,000 for [REDACTED].

DISCUSSION

We believe that an argument can be made that since the [REDACTED]
deficiency results from a transaction that produced a deficiency
of more than \$1,000, albeit in another year, these provisions
should apply. This approach would be consistent with the purpose
of the statutes involved, the deterrence of valuation
overstatements and other tax motivated transactions. It would
seem incongruous to relieve the taxpayer of the full burden of
these additions to tax and interest solely because the impact of
his valuation overstatement was spread over two years.

However, the language of the statutes can easily be read to
require that the \$1,000 floor must be met in each year that the

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additions are to be applied. This is consistent with the apparent intent to exempt de minimis amounts. Indeed, we question whether the cost involved in asserting these additions would be recompensed by the likely small return. Further, dicta contained in a recent Tax Court opinion indicate that the Court believes that the § 6659 floor must be met for each year. Heasley v. Commissioner, T.C. Memo. 1988-408 (August 31, 1988). If anything, the language contained § 6621(c)(2) more clearly applies the \$1,000 floor to each year than does the language of § 6659(d). Accordingly, we believe that the better course is to not assert the § 6621(c) and § 6659 additions on the [REDACTED] deficiency.



DANIEL J. WILES